No. 17-5639

IN THE SUPREME COURT OF THE UNITED STATES

ADAUCTO CHAVEZ-MEZA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed a district-court order granting in part petitioner's motion for a reduction of sentence pursuant to 18 U.S.C. 3582(c)(2), where the court of appeals determined that it could ascertain from the record that the district court had considered the relevant sentencing factors and had not abused its discretion in selecting the reduced sentence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 854 F.3d 655. The order of the district court (Pet. App. 1b) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 14, 2017. On July 10, 2017, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including August 14, 2017, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of New Mexico, petitioner was convicted of conspiracy to possess and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A) and 846. Judgment 1. He was sentenced to 135 months of imprisonment, to be followed by five years of supervised release. Id. at 2-3. After the Sentencing Commission (Commission) amended certain Sentencing Guidelines provisions for drug offenses, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his term of imprisonment to 108 months. Pet. App. 3a. The district court granted the motion in part, reducing petitioner's term of imprisonment to 114 months. Id. at 4a. The court of appeals affirmed. Id. at 4a-13a.

1. Section 3553 of Title 18 of the United States Code prescribes procedures for a federal court to impose a criminal sentence. Section 3553(a) directs the sentencing court to "consider" an array of factors concerning the defendant and the offense, including the applicable Sentencing Guidelines. 18 U.S.C. 3553(a). The court must then "impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in" Section 3553(a)(2), such as "provid[ing] just punishment," "afford[ing] adequate deterrence to criminal conduct," and "protect[ing] the public from further crimes of the defendant," among others. Ibid.

Section 3553(c) requires the sentencing court, "at the time of sentencing, [to] state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. 3553(c). For within-Guidelines sentences of 24 months or more, the court must state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1). For sentences "outside the [Guidelines] range," the court must state -- and must record in writing "with specificity in a statement of reasons form" -- "the specific reason for the imposition of a sentence different from" the recommended Guidelines range. 18 U.S.C. 3553(c)(2). Thus, "[w]here the defendant or prosecutor presents nonfrivolous reasons for imposing a different sentence" than the Guidelines recommend, "the judge will normally * * * explain why he has rejected those arguments." Rita v. United States, 551 U.S. 338, 357 (2007).

A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see Dillon v. United States, 560 U.S. 817, 819 (2010). As relevant here, however, the court "may reduce" a defendant's sentence "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o)." 18 U.S.C. 3582(c)(2). Section 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." Dillon, 560 U.S. at 825. "Instead,

it provides for the 'modification of a term of imprisonment' by giving courts the power to 'reduce' an otherwise final sentence" in light of a retroactive change in the applicable Guidelines. Ibid. (brackets omitted). Section 3582(c)(2) permits a court to "reduce the term of imprisonment, after considering" the statutory sentencing factors set out in Section 3553(a), only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2).

2. a. For more than one year, petitioner and two co-conspirators were engaged in distributing methamphetamine in Albuquerque, New Mexico. Presentence Investigation Report (PSR) ¶¶ 12, 15. Petitioner and his co-conspirators were associated with the Sinaloa Drug Cartel in Phoenix, Arizona. PSR ¶ 15. They typically would obtain methamphetamine from a Sinaloa distributor in Phoenix and transport it to Albuquerque, where they would sell it, but on some occasions they transported methamphetamine to other parts of the western and midwestern United States. PSR ¶¶ 12, 15.

In 2012, petitioner and his co-conspirators were arrested in a sting operation, during which they had attempted to sell approximately four pounds of methamphetamine to an undercover Federal Bureau of Investigations employee for $58,000. PSR ¶¶ 6-8, 24. Forensic testing of the drugs seized in the sting revealed a net weight of 1,759.5 grams of methamphetamine (1,658.3 grams of methamphetamine (actual)). PSR ¶ 8; 3 C.A. ROA 1.

b. Petitioner was charged with possessing 500 or more grams of a substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A)(viii), and with conspiring to do so, in violation of 21 U.S.C. 846. Indictment 1-2. Petitioner pleaded guilty to both charges without a plea agreement. Judgment 1; PSR ¶ 60.

In 2013, the district court sentenced petitioner. Judgment 1; 4 C.A. ROA 1-14. With a total offense level of 33 and a criminal history category of I, petitioner's advisory range under the Guidelines was 135 to 168 months of imprisonment. PSR ¶ 59; 2 C.A. ROA 20-21; 4 C.A. ROA 11-12. After a hearing, the court imposed a sentence of 135 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court explained that one "reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity" of drugs. 4 C.A. ROA 11. Petitioner, the court noted, had "distributed 1.7 kilograms of actual methamphetamine," which was "a significant quantity." Ibid. The court further observed that "one of the other reasons that the penalty is severe in this case, is because of methamphetamine." Ibid. The judge explained that he had "been doing this a long time, and from what [he] gather[ed] and what [he had] seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities." Ibid.

Petitioner filed a notice of appeal but later voluntarily dismissed his appeal. D. Ct. Doc. 127, at 1 (July 22, 2013); D. Ct. Doc. 166-1, at 3 (Jan. 21, 2014).

3. In 2014, the Sentencing Commission issued Amendment 782 to the Sentencing Guidelines, which retroactively modified the drug-quantity Guideline and reduced the base offense level for defendants like petitioner by two levels. Pet. App. 2a; see Sentencing Guidelines App. C Supp., Amend. 782, at 63-73 (Nov. 1, 2014); id. Amend. 788, at 85-87 (Nov. 1, 2014). That two-level reduction, in turn, lowered petitioner's advisory Guidelines range to 108 to 135 months of imprisonment. 3 C.A. ROA 2-3; C.A. Supp. ROA 1-2.

In 2015, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his sentence from 135 months to 108 months based on Amendment 782. D. Ct. Doc. 167, at 1-3 (Mar. 16, 2015). The Probation Office submitted a memorandum to the district court regarding the application of Amendment 782 to petitioner's case. 3 C.A. ROA 2-3. The memorandum noted that, according to a Bureau of Prisons disciplinary report, petitioner had been sanctioned for improperly using another inmate's phone number, and had as a result lost work privileges for 180 days and phone privileges for 30 days. Id. at 3. The memorandum also noted that petitioner completed a drug-abuse program, was trying to enroll in a nonresidential drug-abuse program, and had completed various education courses. Ibid.

The district court appointed counsel for petitioner, and the government and petitioner subsequently stipulated that petitioner was eligible for a reduced sentence within the modified Guidelines range. Pet. App. 3a; D. Ct. Doc. 169, at 1-2 (Aug. 10, 2015). The stipulation noted the Probation Office's statement in its memorandum that petitioner had been sanctioned while incarcerated, but the government agreed that this misconduct "is not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors." D. Ct. Doc. 169, at 1. The government did not take a position on the appropriate sentence within the modified Guidelines range. See ibid. Petitioner requested a sentence of 108 months, at the bottom of the modified range, noting that the court had explained in imposing his original sentence that the drug quantity was a driving factor in determining his sentence and that a sentence at the "low end of the guideline range" was appropriate. Id. at 2 (internal quotation marks omitted). Petitioner also noted his completion of various educational courses while incarcerated. Ibid.

The district court issued an order "grant[ing]" petitioner's motion in part, reducing his term of imprisonment to 114 months. Pet. App. 1b (capitalization altered); see C.A. Supp. ROA 1. The court's order was entered on a form issued by the Administrative Office of the United States Courts, Form AO-247. Ibid.; see Pet. App. 4a. In completing the form, the court set forth the

calculation of petitioner's modified Guidelines range, indicated that the reduced sentence "is within the amended guidelines range," C.A. Supp. ROA 2, and certified that it had "tak[en] into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." Pet. App. 1b. Petitioner did not seek reconsideration or clarification of the district court's order.

4. The court of appeals affirmed. Pet. App. 1a-13a. The court rejected petitioner's contention that the district court had "fail[ed] to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence." Id. at 2a; see id. at 4a-13a. The court of appeals explained that Section 3582(c)(2) requires district courts "'to consider the factors in 18 U.S.C. § 3553(a),'" but it "'does not mention § 3353(c),'" and thus "does not incorporate the explanatory requirement from § 3553(c)" that requires courts in original sentencing proceedings to state in open court the reasons for a sentence. Id. at 5a (quoting United States v. Verdin-Garcia, 824 F.3d 1218, 1221 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). Given the textual differences between Section 3553(a), which "nowhere imposes on the court a duty to address [the Section 3553(a)] factors on the record," and Section 3553(c), which "speaks expressly to the nature of the district court's duty to explain itself on the record," the court determined that "[i]t would be incongruous * * * to read

a duty of explanation into subsection (a) when the exact matter has already been considered and addressed by Congress in subsection (c)." Id. at 6a.

The court of appeals further explained that, in any event, "the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." Pet. App. 6a. "The original sentencing procedures required by § 3553(c)," the court reasoned, "must therefore supply the ceiling for sentence-reduction procedures." Id. at 7a. And the court observed that "original sentencing proceedings" to which Section 3553(c) does apply "do not require extensive explanations for sentences within the guidelines range," but instead require "'only a general statement noting the appropriate guideline range and how it was calculated,'" which is "'amply fulfill[ed]'" by a "court's 'citation of the presentence report's calculation method and recitation of the suggested imprisonment range.'" Id. at 7a-8a (brackets and citations omitted). The court accordingly reasoned that "the same 'general statement noting the appropriate guideline range and how it was calculated' in applying § 3553(a)" at an original sentencing "also suffices in sentence-reduction proceedings." Id. at 8a.

The court of appeals recognized that "[m]ore is required at sentencing when the defendant requests a below-guidelines sentence." Pet. App. 7a n.1. In such circumstances, an appellate

court "must be able to discern from the record that the sentencing judge did not rest on the guidelines alone, but considered whether the guidelines sentence actually conforms, in the circumstances, to the statutory factors." Id. at 8a n.1 (citation omitted). The court explained, however, that such a "situation is not raised on these facts" because courts ruling on sentence-reduction motions under Section 3582(c)(2) "can only reduce a sentence to a term less than the guidelines minimum if the sentencing court originally imposed a sentence below the guidelines range," ibid., which is not true here, see id. at 2a.

Applying those principles, the court of appeals determined that "[n]othing indicates in this case" that "the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." Pet. App. 9a. The court observed that "[t]he first page" of the district court's order "signed by the judge" -- on a form generated by the Administrative Office of the United States Courts -- "indicates that [the judge] ha[d] 'taken into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a)." Ibid. (brackets omitted). The court of appeals further observed that "[t]he (sealed) second page" of the order "correctly indicates the amended guidelines range." Id. at 9a-10a. The court of appeals determined that "it is safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the

materials (which included an incident of misconduct while in prison) presented to it by the parties." Id. at 10a.

The court of appeals acknowledged some disagreement among other circuits "on the degree of explanation necessary to satisfy § 3582." Pet. App. 10a. The court acknowledged "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness," but the court "nonetheless" was "persuaded that § 3582 does not require more explanation than was provided here" for the district court's decision granting in part petitioner's motion for a reduced sentence. Id. at 11a, 13a (citation and internal quotation marks omitted). The court expressly reserved judgment on "whether a district court must justify rejecting a sentence-reduction motion," noting that some courts of appeals "have imposed higher explanatory standards" for such decisions. Id. at 9a n.2.

ARGUMENT

Petitioner contends (Pet. 6-19) that the court of appeals erred in affirming the district court's order granting in part petitioner's motion for a sentence reduction and that its decision implicates a disagreement among the courts of appeals concerning the proper interpretation of 18 U.S.C. 3582(c)(2). The decision below, however, correctly determined that the district court acted within its discretion and that in these circumstances Section 3582(c)(2) did not require the court to provide a greater

explanation for the reduced within-Guidelines sentence. That holding is consistent with the statute and this Court's decisions, and it does not conflict with the decisions of other circuits. This Court has recently and repeatedly denied certiorari in cases addressing the degree of explanation required in denying motions for sentence reductions under 18 U.S.C. 3582(c)(2). See Hunnicutt v. United States, 137 S. Ct. 2265 (2017) (No. 16-8003); Hernandez-Espinoza v. United States, 137 S. Ct. 2264 (2017) (No. 16-7869); Verdin-Garcia v. United States, 137 S. Ct. 2263 (2017) (No. 16-6786); Piper v. United States, 137 S. Ct. 2263 (2017) (No. 16-7662). It should follow the same course here.

1. a. The sentence-reduction proceedings established in Section 3582(c)(2) represent a "narrow exception to the rule of finality" that otherwise prohibits the modification of criminal judgments. Dillon v. United States, 560 U.S. 817, 827 (2010). Section 3582(c)(2), this Court has made clear, "does not authorize a sentencing or resentencing proceeding," but merely provides a mechanism for district courts to reduce a term of imprisonment in light of subsequent changes in the applicable Guidelines. Id. at 825. That procedure for modifying otherwise-final sentences is not "constitutionally compelled," but rather is a "congressional act of lenity" that gives imprisoned defendants "the benefit of later enacted adjustments" to the Guidelines. Id. at 828.

A court's authority to reduce a sentence under Section 3582(c)(2) is circumscribed by both the statute and the Guidelines. A sentence reduction under Section 3582(c)(2) is permissible only where (1) the Sentencing Commission has amended a Guideline; (2) the Commission has determined that the amended Guideline is subject to Section 3582(c)(2); and (3) the amended Guideline has the effect of lowering the Guidelines range on which a particular defendant's sentence was "based." 18 U.S.C. 3582(c)(2); see Sentencing Guidelines § 1B1.10(a)(2), p.s. If all of those conditions are met, the district court "may reduce the term of imprisonment, after considering the factors set forth in [18 U.S.C.] 3553(a)," but only "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2). Those policy statements include Section 1B1.10(b)(2)(A), which generally prohibits reducing the sentence below "the minimum of the amended guideline range." See Dillon, 560 U.S. at 822 (citation omitted); see also id. at 824-830 (holding that Section 1B1.10(b)(2)(A), unlike other aspects of the Guidelines rendered advisory by United States v. Booker, 543 U.S. 220 (2005), remains binding); Sentencing Guidelines § 1B1.10(b)(2)(B) (exception where defendant was originally sentenced below advisory range based on substantial assistance).

Applying Section 3582(c)(2) thus requires a two-step inquiry. Dillon, 560 U.S. at 826. First, the district court must determine whether the defendant is eligible for a reduction at all, i.e., whether a retroactive Guidelines amendment applies to the defendant's sentence, and whether a reduction of that sentence "is consistent with applicable policy statements," 18 U.S.C. 3582(c)(2), including Section 1B1.10. Second, if the defendant is eligible, the court must consider "any applicable [Section] 3553(a) factors" and determine in its discretion whether the defendant should receive a sentence reduction. Dillon, 560 U.S. at 827. The two steps indicate that "Congress intended to authorize only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding." Id. at 826; accord Sentencing Guidelines § 1B1.10(a)(3), p.s. (noting that "proceedings" under Section 3582(c)(2) "do not constitute a full resentencing of the defendant").

Consistent with the limited scope of Section 3582(c)(2) proceedings and their nature as an act of legislative grace, fewer and less onerous procedural requirements apply than in original sentencing proceedings. See Dillon, 560 U.S. at 827-828. Unlike original sentencing proceedings -- where Section 3553(c) requires the district court to "state in open court the reasons for its imposition of the particular sentence" and, if the sentence is outside the advisory Guidelines range, to "state[] with

specificity" the "reasons" for the sentence chosen, 18 U.S.C. 3553(c) -- Section 3582(c)(2) imposes no similar requirement. As the court of appeals explained, Section 3582(c)(2) merely directs the court to "'consider[] the factors set forth in section 3553(a) to the extent that they are applicable.'" Pet. App. 5a (quoting 18 U.S.C. 3582(c)(2)) (emphasis omitted). In addition, although Federal Rule of Criminal Procedure 43 requires a defendant's presence at the original sentencing, Fed. R. Crim. P. 43(a)(3), Section 3582(c)(2) proceedings are expressly exempted from that requirement, Fed. R. Crim. P. 43(b)(4). Nor does any right to counsel apply during a Section 3582(c)(2) sentence-modification proceeding. See, e.g., United States v. Johnson, 580 F.3d 567, 569 (7th Cir. 2009) (per curiam); United States v. Webb, 565 F.3d 789, 794 (11th Cir. 2009) (per curiam) (collecting cases).

In light of these distinctive features of Section 3582(c)(2) sentence-reduction proceedings, the court of appeals correctly concluded that, when a district court grants a Section 3582(c)(2) motion in part and indicates that in doing so it considered the Section 3553(a) factors, the statute does not require further explanation of why the court did not reduce the defendant's sentence even more. Pet. App. 5a-13a. The district court's only statutory obligation after determining that a defendant is eligible for a reduced sentence is to "consider[]" any Section 3553(a) factors that are "applicable." 18 U.S.C. 3582(c)(2). To

the extent the court concludes those factors weigh in favor of a reduced sentence that is within but not at the bottom of the amended Guidelines range, the court has no duty to address those factors explicitly. As the court of appeals explained, the fact that Congress expressly required a district court at an original sentencing to explain on the record the reasons for the sentence imposed, but omitted such a requirement in Section 3582(c)(2) proceedings, strongly indicates that Section 3582(c)(2)'s direction to "consider[]" applicable Section 3553(a) factors does not mandate on-the-record explanation. Pet. App. 6a. As the court of appeals recognized, "[i]t would be incongruous * * * to read a duty of explanation into [Section 3553(a)]," which Section 3582(c)(2) incorporates, "when the exact matter has already been considered and addressed by Congress in [Section 3553(c)." Ibid.

At a minimum, as the court of appeals further explained, "the requirements imposed on a court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." Pet. App. 6a. Given that Section 3553(c) does not apply to Section 3582(c)(2) proceedings -- which "merely represent 'a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments'" -- "[t]he original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures." Id. at 6a-7a (quoting Dillon, 560 U.S. at 828). Petitioner himself acknowledges

that the discussion in Rita v. United States, 551 U.S. 338 (2007), of "what district courts are obliged to do at original sentencings" under Section 3553(c) does not apply to "§ 3582(c)(2) proceedings," which "are limited in scope and not full resentencing proceedings." Pet. 9; see ibid. (disclaiming a broader interpretation that equates the requirements of Section 3553(c) as construed in Rita with those of Section 3582(c)(2)). And "original sentencing proceedings do not require extensive explanations for sentences within the guidelines range." Pet. App. 7a. Rather, "[w]hen a judge decides simply to apply the Guidelines to a particular case," the "[c]ircumstances may well make clear that the judge rests his decision upon the Commission's own reasoning that the Guidelines sentence is a proper sentence (in terms of § 3553(a) and other congressional mandates) in the typical case, and that the judge has found that the case before him is typical." Rita, 551 U.S. at 356-357. "Unless a party contests the Guidelines sentence generally under § 3553(a) -- that is, argues that the Guidelines reflect an unsound judgment, or, for example, that they do not generally treat certain defendant characteristics in the proper way -- or argues for departure, the judge normally need say no more." Id. at 357. The court of appeals thus correctly held that nothing more is required when a district court grants a Section 3582(c)(2) motion and imposes a sentence within the modified Guidelines range. Pet. App. 7a-10a.

b. The court of appeals correctly applied those principles here. Pet. App. 9a-10a. As it explained, "[n]othing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." Id. at 9a. The district court had expressly indicated on the form reflecting its ruling that it had "taken into account" both "the sentencing factors set forth in 18 U.S.C. § 3553(a)" and "the policy statement set forth" in Section 1B1.10. Ibid. (brackets omitted); see id. at 1b. Its ruling further "correctly indicate[d] the amended guidelines range." Id. at 10a. And although the court's written ruling did not elaborate how it weighed the Section 3553(a) factors, the court of appeals determined that, on this record, "it is safe to infer from the court's rejection of the low-end-of-the-range sentence that it carefully considered the materials * * * presented to it by the parties." Ibid. Those materials "included an incident of misconduct while in prison," ibid., which the Probation Office had discussed in its memorandum addressing petitioner's Section 3582(c)(2) motion, and which had resulted in petitioner's being "sanctioned" and "disciplined" by prison officials. 3 C.A. ROA 3. The court of appeals' factbound determination that the district court considered the relevant factors and did not abuse its discretion in selecting the reduced sentence does not warrant this Court's review. See United States

v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

2. Petitioner errs in contending (Pet. 7-9) that this Court's review is warranted in this case to resolve a lower-court conflict about the interpretation of Section 3582(c)(2). The courts of appeals broadly agree on the basic standard for decisions on Section 3582(c)(2) motions. To the extent tension exists in the language of courts of appeals' opinions, it is not implicated here.

a. The courts of appeals are in general accord that a district court's decision and the record together must enable "meaningful[] review." United States v. Marion, 590 F.3d 475, 477 (7th Cir. 2009); see, e.g., United States v. Christie, 736 F.3d 191, 196 (2d Cir. 2013); United States v. Howard, 644 F.3d 455, 459 (6th Cir. 2011); United States v. Burrell, 622 F.3d 961, 964 (8th Cir. 2010); see also Pet. App. 11a-12a (collecting cases). That principle does not reflexively require a remand whenever a district court does not articulate its reasons. As the Second Circuit has explained, "[t]he failure to state reasons will not always require a remand"; for example, "the reasons for the district court's actions may be obvious from the history of the case." Christie, 736 F.3d at 196; see United States v. Zayas-Ortiz, 808 F.3d 520, 524-525 (1st Cir. 2015) (concluding that the "record as a whole" was "sufficient" to allow the court of appeals

to "infer" that the district court denied a Section 3582(c) motion based on "public safety concerns"); United States v. Trujillo, 713 F.3d 1003, 1009 (9th Cir. 2013) ("[E]ven where a judge never mentions '§ 3553(a),' it may be clear from the court's experience and consideration of the record that the factors were properly taken into account." (citation omitted)).

Petitioner errs in suggesting (Pet. 10-12, 16-19) that the court below has adopted a standard that departs from the uniform requirement of a decision sufficient for meaningful appellate review. It has acknowledged previously, and it reiterated in its decision in this case, "'the need for a district court'" ruling on a Section 3582(c)(2) motion "'to create a meaningful basis for appellate review and to promote the perception of fairness.'" Pet. App. 13a (quoting United States v. Verdin-Garcia, 824 F.3d 1218, 1222 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). Applying that standard, the court of appeals here determined that it could ascertain from the record that the district court considered the relevant factors and did not abuse its discretion. Pet. App. 10a. The court of appeals explained that it could "infer" from the record that the district court had "carefully considered the materials * * * presented to it by the parties," including petitioner's disciplinary record while incarcerated, and had "reject[ed]" petitioner's arguments for a "low-end-of-the-range sentence." Ibid.; see also Verdin-Garcia, 824 F.3d at 1222

(holding district courts' decisions were sufficient where "it [was] apparent" that the courts had considered but "were not persuaded by" defendants' arguments regarding their sentences).

Petitioner is similarly mistaken in contending (Pet. 7-8) that the result reached below is inconsistent with the results other circuits reached in Howard, Burrell, and United States v. Williams, 557 F.3d 1254 (11th Cir. 2009) (per curiam). In each of those cases, the district court granted a lesser reduction than the defendant requested, and the court of appeals remanded because it could not determine, from the record before it, whether the district court had properly considered the statutory sentencing factors. See Howard, 644 F.3d at 461 ("it is impossible for us to ensure that the district court did not abuse its discretion" (citation omitted)); Burrell, 622 F.3d at 966 (not "enough explanation of the [district] court's reasoning to allow for meaningful appellate review"); Williams, 557 F.3d at 1257 ("[T]he district court was required to consider the § 3553(a) factors in making its reduction determination and * * * the record does not allow us to further conclude that the district court did so on this occasion."). Here, in contrast, the court of appeals determined that it could ascertain that the district court had considered the relevant factors and did not abuse its discretion. Pet. App. 10a. The factbound determination that meaningful appellate review was possible on this record differentiates this

case from the decisions on which petitioner relies, irrespective of any tension in the language the courts have used in articulating the relevant standard.

b. Not only is any disagreement in the circuits not implicated by the Tenth Circuit's decision here, but petitioner overstates (Pet. 9-12) the tension in other circuits' approaches. Petitioner asserts (Pet. 9) that the Ninth Circuit in Trujillo has "gone further" than other courts, by holding that reversal is required where a district court "fail[s] to explain its reasons for rejecting all of the defendant's non-frivolous arguments in support of the sentence reduction." But Trujillo recognized that, even in an original sentencing, "there is no mechanical requirement that a sentencing court discuss every factor" under Section 3553(a). 713 F.3d at 1009. As the Ninth Circuit explained, the touchstone is whether the sentencing decision "permit[s] meaningful appellate review," ibid. -- the same standard that other courts (including the court of appeals here) apply. And in any event, petitioner correctly disavows the Ninth Circuit's approach and the rationale underlying it. See Pet. 9 (stating that petitioner is "not seeking a rule as broad as that set forth by the Ninth Circuit").

Petitioner additionally asserts (Pet. 10-12) that the Fourth Circuit in United States v. Smalls, 720 F.3d 193 (4th Cir. 2013), and the Fifth Circuit in United States v. Washington, 375 Fed.

Appx. 390 (5th Cir. 2010) (per curiam), have categorically held that no explanation of the district court's ruling is necessary. Petitioner misreads those decisions. In Smalls, the Fourth Circuit rejected a universal rule requiring a "ritualistic incantation in order" for a district court "to establish its consideration of a legal issue." 720 F.3d at 196 (citation omitted). The Fourth Circuit applied a rebuttable "presumption" that, "in the absence of evidence a court neglected to consider relevant factors," the court did consider those factors, and in that event "does not err in failing to provide a full explanation for its * * * decision." Ibid. A rebuttable presumption that obviates the need for a "ritualistic" recitation of every sentencing factor in each case is not equivalent to a practice of never requiring any explanation at all. The Fifth Circuit's unpublished decision in Washington similarly determined that the defendant had not "demonstrated that the district court abused its discretion." 375 Fed. Appx. at 391. In doing so, the court followed circuit precedent applying a presumption similar to that the Fourth Circuit articulated in Smalls. See ibid. (citing United States v. Evans, 587 F.3d 667, 674 (5th Cir. 2009), cert. denied, 561 U.S. 1011 (2010)); see Evans, 587 F.3d at 673. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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